

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**February 11, 1999**

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF BELL SOUTH</b>	)	<b>DOCKET NO. 95-02614</b>
<b>TELECOMMUNICATIONS, INC.</b>	)	
<b>FOR A PRICE REGULATION PLAN</b>	)	
	)	

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**ORDER DENYING PETITION FOR STAY, MOTION TO STRIKE AND  
REQUEST FOR OFFICIAL NOTICE**

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This matter came before the Tennessee Regulatory Authority ("Authority") on a Petition for Stay ("Petition") filed by the Consumer Advocate Division, Office of the Attorney General ("Consumer Advocate") on December 16, 1998. On January 11, 1999, BellSouth Telecommunications, Inc. ("BellSouth") filed a response to the Consumer Advocate's Petition. Thereafter, on January 20, 1999, the Consumer Advocate filed a Motion to Strike Portions of BellSouth's Response to the Consumer Advocate's Petition for Stay. On January 28, 1999, the Consumer Advocate filed a Request for Official Notice. The Directors of the Authority considered these matters at a regularly scheduled Authority Conference held on February 2, 1999.

The Authority acted on the Consumer Advocate's Petition for Stay pursuant to Tenn. Code Ann. § 4-5-316, which provides as follows:

A party may submit to the agency a petition for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. **The agency may**

**take action on the petition for stay, either before or after the effective date of the initial or final order.** (Emphasis supplied).

The Final Order in this matter was entered on December 9, 1998; the Consumer Advocate filed its Petition on December 16, 1998, which was within seven (7) days from the entry and effective date of that Order.

After careful consideration of the pleadings, briefs and the record, as well as the Final Order, the Authority has determined that the Consumer Advocate has failed to bring any new matters before the Authority that were not already addressed during the October 27, 1998 deliberations. The criteria for granting a stay pending appeal are as follows: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the stay is granted; and (4) the public interest in granting the stay.<sup>1</sup> After careful review of such criteria, the Authority has determined that the Consumer Advocate has failed to meet such criteria, and therefore, it is appropriate to deny the Consumer Advocate's Petition.

The Authority also considered the Consumer Advocate's Motion to Strike Portions of BellSouth's Response. After careful review of the same, the Authority determined that the Consumer Advocate's Motion was not well taken, in as much as the Motion did not clearly specify which language in BellSouth's Response to the Petition for Stay the Consumer Advocate sought to strike. Therefore, the Authority deemed it was appropriate to deny the same.

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<sup>1</sup> See Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991); In re: DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir. 1985); and Skillern v. Proconier, 469 U.S. 1182, 1184, 105 S.Ct. 945, 946 (1985).

In an attempt to dispose of all pending procedural motions the Authority was asked by the Consumer Advocate at the February 2, 1999, Conference to consider a Request For Official Notice filed by the Consumer Advocate on January 28, 1999. At the February 2nd Conference, the Consumer Advocate had insisted that the Request should be considered as part of the Petition for Stay. However, the Petition for Stay was filed on December 16, 1998, forty (40) days prior to the filing of the Request. Further, the Request contained no reference that would have indicated that it should be considered as part of the Petition for Stay.

After carefully considering the Request, and the fact that it had been filed forty-seven (47) days after entry of the Final Order, the Authority determined that it was appropriate to deny the same.<sup>2</sup> First, neither Tenn. Code Ann. § 4-5-313 nor § 65-2-109 require that a request for official notice be entertained after the entry of the Final Order. Moreover, Tenn. Code Ann. § 4-5-313(6) does require that any action to take official notice be done before or during the hearing, or before the issuance of any initial or final order. Tenn. Code Ann. § 4-5-313(6) provides as follows:

**Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed,** of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed. (Emphasis supplied).

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<sup>2</sup> Furthermore, contrary to the assertion of the Consumer Advocate, the Authority is not bound by the Tennessee Rules of Evidence and is not required to take official notice of the material attached to the Consumer Advocate's Request. See Tenn. Code Ann. §§ 65-2-109(1) and 4-5-313(1).

Therefore, the Authority has acted in a manner consistent with the above-cited statute. Finally, this Order does not alter or modify the Final Order entered in the proceeding on December 9, 1998.

**IT IS THEREFORE ORDERED THAT:**

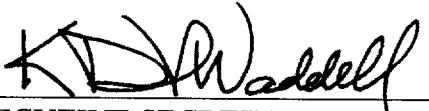
1. The Consumer Advocate's Petition for Stay is denied.
2. The Consumer Advocate's Motion to Strike Portions of BellSouth's Response to the Petition for Stay be denied.
3. The Consumer Advocate's Request for Official Notice be denied.
4. Any party aggrieved by the Authority's decision contained in this Order may file a Petition for Reconsideration within ten (10) days of the date of its entry.
5. Any party aggrieved by the Authority's action embodied herein may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
CHAIRMAN

  
DIRECTOR

  
DIRECTOR

ATTEST:

  
EXECUTIVE SECRETARY